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No. 84-397

In the Supreme Court of the United States

OCTOBER TERM, 1984

LEONARD MELVIN WEISSER AND NANA HART, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that forged money orders are not "securities" within the meaning of 18 U.S.C. 2314 and 2315, and that the affidavit for a search warrant for one of their homes contained a false statement.

1. After a jury trial in the United States District Court for the Eastern District of Missouri, petitioners were convicted on one count of transporting falsely made and forged securities, in violation of 18 U.S.C. 2314 (count 1), and one count of selling the securities, knowing them to have been falsely made and forged, in violation of 18 U.S.C. 2315 (count 2). Petitioner Weisser was sentenced to concurrent terms of five years' imprisonment on each count. Petitioner Hart was sentenced to 15 months' imprisonment on count 1 and three years' probation on count 2. The court of appeals affirmed.

The evidence at trial established that on December 17, 1982, 465 blank Travelers Express money orders were stolen from a market in Cahokia, Illinois. Shortly afterwards, petitioners met with a government informant in St. Louis, Missouri and sold her four of the money orders, each made out in the amount of $145 (Pet. App. 26-27). Petitioners subsequently were arrested; when law enforcement agents then searched petitioner Hart's home pursuant to a warrant, they discovered 88 more of the Travelers Express money orders made out in various amounts (*id.* at 27).

On appeal, the Eighth Circuit rejected petitioners' argument that the money orders did not constitute "evidence of indebtedness" and therefore were not "securities" within the meaning of 18 U.S.C. 2314 and 2315,[1] noting that "a Travelers Express money order is valid when imprinted with an amount on a machine furnished by Travelers Express" (Pet. App. 29).[2] The court of appeals also rejected petitioners' contention that the affidavit supporting the warrant for the search of Hart's home contained a false statement (Pet. App. 35 n.2).

2. The court of appeals plainly was correct in holding that the money orders handled by petitioners were securities within the meaning of Sections 2314 and 2315.[3] As the court

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[1]Section 2311 defines a security for purposes of Sections 2314 and 2315 to include, along with many specifically enumerated types of documents, any "evidence of indebtedness."

[2]In this case, of course, an unauthorized machine was used fraudulently to imprint the money orders (Pet. App. 29).

[3]The courts of appeals consistently have held that money orders may be securities within the meaning of the statute. See, *e.g.*, *United States* v. *Rochon*, 575 F.2d 191, 194 (8th Cir.), cert. denied, 439 U.S. 979 (1978); *United States* v. *Galardi*, 476 F.2d 1072, 1076 (9th Cir.), cert. denied, 414 U.S. 839 (1973); *United States* v. *Smith*, 452 F.2d 638, 640 (5th Cir. 1971), cert. denied, 406 U.S. 910 (1972); *Nelson* v. *United States*, 406 F.2d 1136, 1138 (10th Cir. 1969).

noted, a Travelers Express money order is validated when an amount is printed on it by an authorized machine (Pet. App. 29); any order so imprinted will be honored by Travelers Express. Tr. 52, 61-64. See *United States* v. *Smith*, 452 F.2d 638, 640 (5th Cir. 1971), cert. denied, 406 U.S. 910 (1972). At the point when an amount is entered on the order, then, an evidence of indebtedness — and thus a security —is created.

The cases cited by petitioners (Pet. 18-20) do not conflict with this conclusion. Those cases held that the completion of the blank portion of a stolen money order constitutes a false making, forgery, or alteration within the meaning of Section 2314, distinguishing an entirely blank form on the basis that the latter did not evidence an obligation. *United States* v. *Bedgood*, 453 F.2d 988, 990 (5th Cir. 1972); *Gearing* v. *United States*, 432 F.2d 1038, 1041 (5th Cir. 1970), cert. denied, 401 U.S. 980 (1971); *Castle* v. *United States*, 287 F.2d 657, 660 (5th Cir. 1961); *United States* v. *Smith*, 426 F.2d 275, 276 (6th Cir.), cert. denied, 400 U.S. 868 (1970); *United States* v. *DiPietto*, 396 F.2d 283, 286-287 (7th Cir. 1968); *Boyd* v. *United States*, 442 F.2d 1283, 1284-1285 (10th Cir. 1971).[4] In each of those cases, the money order forms at issue had been entirely completed; the courts therefore were not required to decide whether the fraudulent imprinting of a dollar amount would have been insufficient to render the forms "securities" within the meaning of the statute.[5] Indeed, nothing in the decisions

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[4] *United States* v. *Tasher*, 453 F.2d 244 (10th Cir. 1972), also cited by petitioners (Pet. 20), upheld a conviction under 18 U.S.C. 500; that case therefore is entirely inapposite to petitioners' Section 2314 and 2315 claims.

[5] Petitioners also argue that two Eighth Circuit cases conflict with the decision below (Pet. 18-19). These cases obviously do not create a conflict among the circuits. In any event, their holdings are entirely consistent with the decision here. In *United States* v. *Rochon*, 575 F.2d

suggests that the Eighth Circuit erred in concluding on the record before it that Travelers Express would have honored the altered forms that had been handled by petitioners.

3. Petitioners also challenge the affidavit supporting the search warrant for Hart's home. In particular, they argue that the affidavit is misleading when it reports that Hart "stated that the remaining stolen money orders were located at her residence at Columbia, Illinois. This statement was recorded by consensual monitoring by the * * * informant and has been verified by * * * the Affiant" (Pet. App. 37-38). In the recorded conversation between Hart and the informant referred to in this portion of the affidavit, the informant asked Hart "[d]id you bring them things today," and "[d]o you want a ride over and get em?" When another voice asked "[w]here," Hart responded "[o]ver to the house to get some more * * *." GX 17E, at 1. Although the agent who filed the affidavit declared that the final words on the tape were "money orders," the judge ruled that the transcript given to the jury should read "inaudible" at that point. GX 17E, at 1; Tr. 37-40, 46-48. In light of this background, petitioners maintain that the district court erred in failing to strike the agent's affirmation that he had verified Hart's statement.

This contention is baseless. In context, it is plain that the informant and Hart were discussing the stolen money orders (see Tr. 38, 40). In any event, petitioners have made no showing that the affiant made his statement recklessly or

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191, 194 (8th Cir.), cert. denied, 439 U.S. 979 (1978), the court simply stated that money order forms "unquestionably became 'securities' " when they were imprinted with an amount and filled in with the names of the purchaser and payee. *United States* v. *Jackson*, 576 F.2d 749, 755-756 & n.9 (8th Cir. 1978), held that blank stock certificates that clearly had not been validated were not securities — but the court added that other certificates, such as checks and money orders, could form the basis for a prosecution under Section 2315.

in bad faith. See *Franks* v. *Delaware*, 438 U.S. 154, 165 (1978). Petitioners' factual claim on this point has been rejected by both courts below; further review is unwarranted.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
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